A **POLYWELL DEVELOPMENT SDN BHD**

v.

PENTADBIR TANAH DAERAH JOHOR BAHRU, JOHOR

B COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
CLEMENT SKINNER JCA
AZIAH ALI JCA
[CIVIL APPEAL NO: J-01-772-2010]
C 24 OCTOBER 2013

LAND LAW: *Acquisition of land - Objection against amount of compensation awarded - Appeal against decision of High Court - Whether order made by High Court appealable - Land Acquisition Act 1960,*
D *ss. 3(1)(a), 40D & 49(1)*

In 2005, parts of the appellant's land were acquired under s. 3(1)(a) of the Land Acquisition Act 1960 ('the Act') for the construction of a highway. Dissatisfied with the amount of
E compensation awarded, the appellant filed Form N pursuant to s. 38(1) of the Act and the High Court further awarded the sum of RM2,150,868.70 as an additional compensation. The appellant filed the present appeal against the said decision. In opposing the appeal, the respondent submitted the question of whether the
F order on the amount of compensation made by the High Court was appealable in view of s. 40D of the Act. The appellant contended that by virtue of s. 49(1), no appeal may be made against an award of compensation and therefore averred that the present appeal was not in such nature. It was contended that the
G appeal was rather against the purported failure by the Judicial Commissioner ('JC') to direct the assessors in considering that (i) the appellant was a housing developer; (ii) to develop the truncated lands, underpasses must be constructed to join the truncated lands; and (iii) two underpasses must be constructed.

H **Held (dismissing appeal with costs)**
Per Aziah Ali JCA delivering the judgment of the court:

[1] Section 40D of the Act expressly provides that the final arbiter on the amount of compensation payable under the Act
I shall be the High Court. The appeal herein was against the amount of compensation awarded. It was patently clear from

Form N that the appellant had objected to the amount of compensation. The JC had accepted the opinion of the two assessors who were in accord that compensation in the sum of RM2,150,868.70 be awarded as opposed to the sum of RM7,685,000 asked for by the appellant. This appeal was dismissed pursuant to ss. 40D(3) and 49(1). (paras 5 & 6)

Bahasa Malaysia *Translation Of Headnotes*

Pada tahun 2005, sebahagian daripada tanah perayu telah diambil di bawah s. 3(1)(a) Akta Pengambilan Tanah 1960 ('Akta') bagi pembinaan sebuah lebuhraya. Tidak berpuas hati dengan amaun pampasan yang diawardkan, perayu memfailkan Borang N di bawah s. 38(1) Akta dan Mahkamah Tinggi seterusnya mengawardkan jumlah RM2,150,868.70 sebagai pampasan tambahan. Perayu memfailkan rayuan ini terhadap keputusan tersebut. Dalam menentang rayuan ini, responden mengemukakan persoalan sama ada perintah amaun pampasan yang dibuat oleh Mahkamah Tinggi boleh dirayu berdasarkan s. 40D Akta. Perayu menghujahkan bahawa menurut s. 49(1) Akta, tiada rayuan yang boleh dibuat terhadap award pampasan dan dengan itu, menegaskan bahawa rayuan ini tidak bersifat sedemikian. Adalah dihujahkan bahawa rayuan ini menjurus kepada dakwaan kegagalan Pesuruhjaya Kehakiman ('PK') untuk mengarahkan penaksir-penaksir dalam mempertimbangkan bahawa (i) perayu adalah pemaju perumahan; (ii) untuk membangunkan tanah-tanah yang ditarah, laluan bawah mesti dibina untuk menyambungkan kedua-dua tanah yang telah ditarah; dan (iii) kedua-dua laluan bawah mesti dibina.

Diputuskan (menolak rayuan dengan kos)
Oleh Aziah Ali HMR menyampaikan penghakiman mahkamah:

(1) Seksyen 40D Akta memperuntukkan bahawa pemutus terakhir berkenaan amaun pampasan untuk dibayar di bawah Akta adalah Mahkamah Tinggi. Rayuan di sini adalah terhadap amaun pampasan yang diawardkan. Adalah jelas daripada Borang N bahawa perayu telah membantah amaun pampasan. PK telah menerima pendapat kedua-dua penaksir yang bersetuju agar pampasan dalam jumlah RM2,150,868.70 diawardkan berbanding jumlah RM7,685,000 yang dipohon oleh perayu. Rayuan ini ditolak berikutan ss. 40D(3) dan 49(1).

Legislation referred to:
Land Acquisition Act 1960, ss. 3(1)(a), 37(1), 38(1), 40D(3), 49(1)

For the appellant - Tho Kam Chew; M/s KC Tho & Partners
For the respondent - Shahrizal Shaari; Assistant State Legal Adviser, Johor Bahru

[Appeal from High Court, Johor Bahru; Land Reference No: MT(5)15-26-2007 & MT(5)15-27-2007]

Reported by Najib Tamby

JUDGMENT

Aziah Ali JCA:

[1] In 2005 parts of land belonging to the appellant were acquired under s. 3(1)(a) of the Land Acquisition Act 1960 ("the Act") for the construction of the Senai-Pasir Gudang-Desaru Highway (see Form K at p. 46 appeal record). Being dissatisfied with the amount of compensation awarded the appellant filed Form N pursuant to s. 38(1) of the Act (p. 26 appeal record). The High Court Johor Bahru awarded the sum of RM2,150,868.70 as additional compensation. The appellant then filed this appeal against the said decision.

[2] At the commencement of the hearing before us we heard submissions on the issue raised by the respondent on whether the order made by the High Court being an order on the amount of compensation is appealable in view of the provisions of s. 40D of the Act which provides as follows:

> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[3] Learned counsel for the appellant Mr Tho Kam Chew conceded that by virtue of s. 49(1) of the Act no appeal may be made against an award of compensation. Nevertheless learned counsel submits that this appeal is not against the award of compensation but rather against the purported failure by the learned Judicial Commissioner to consider, and failure by Her Ladyship to direct the assessors to consider:

(a) that the appellant is a housing developer;

(b) that to develop the truncated lands, underpasses must be constructed to join the truncated lands;

(c) two underpasses must be constructed (the award of compensation provided for the construction of one underpass).

[4] Section 37(1) of the Act provides as follows:

> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section, make objection to:
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> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.

Such objection shall be made in Form N as provided under s. 38 of the Act which states:

> (1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination, and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the Court.
>
> (2) Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in Court no other grounds shall be given in argument, without leave of the Court.

[5] We had perused the Form N submitted by the appellant and we find that it is patently clear from the said Form that the appellant had objected to the amount of compensation. The appellant contended that two underpasses must be constructed instead of one for development of the truncated lands for which development approval had been obtained by the appellant at the material time. In the grounds of judgment the learned Judicial Commissioner has stated that "... the appellant has conceded that the real issue is the claim for injurious affection for the cost of the underpass that is needed to be built ....". In respect of this claim the learned Judicial Commissioner accepted the opinion of the two assessors who were in accord that compensation in the sum of RM2,150,868.70 be awarded as opposed to the sum of RM7,685,000 asked for by the appellant.

[6] Section 40D of the Act expressly provides that the final arbiter on the amount of compensation payable under the Act shall be the High Court. The intention of the legislature is reiterated again in s. 49(1) as follows:

> (1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:
>
> Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[7] Having considered the provisions of the Act and the submissions of both learned counsel for the appellant and learned Assistant State Legal Adviser for the respondent we agreed with the respondent that this appeal is in essence an appeal against the amount of compensation awarded. By virtue of s. 40D(3) and s. 49(1) we were unanimous that this appeal be dismissed with costs of RM10,000 to the respondent. We further awarded the deposit to the respondent towards costs.